

1 THE HONORABLE JAMES L. ROBART
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOSEPH J. HESKETH III, ON HIS OWN
11 BEHALF AND ON BEHALF OF OTHER
12 SIMILARLY SITUATED PERSONS,

13 Plaintiff,

14 v.

15 TOTAL RENAL CARE, INC., ON ITS OWN
16 BEHALF AND ON BEHALF OF OTHER
17 SIMILARLY SITUATED PERSONS,

18 Defendant.

19 No. 2:20-cv-01733-JLR

20 DECLARATION OF KENNY
21 GARDNER IN SUPPORT OF
22 DEFENDANT TOTAL RENAL
23 CARE, INC.'S MOTION FOR
24 SUMMARY JUDGMENT

25 NOTE ON MOTION CALENDAR:
26 OCTOBER 22, 2021

27 I, Kenny Gardner, declare as follows:

28 1. I am employed by Total Renal Care, Inc. ("TRC" or "Defendant") as Chief People
29 Officer ("CPO"). Before becoming CPO, I served as Group Vice President ("GVP") for Team
30 Endeavor, a DaVita region covering parts of the Southeast. I served as GVP from 2015 until
31 January 2020. I am of legal age and competent to make this declaration. The statements contained
32 herein are based on my personal knowledge and on documents maintained by DaVita, including
33 its subsidiaries like TRC, in the ordinary course of business.

34 2. My understanding of the Disaster Relief Policy is based on my reading of the
35 language in the Policy and my experience determining whether to activate the Policy when I was
36 in local leadership (GVP) during Florida hurricanes.

37 DECLARATION OF KENNY GARDNER ISO
38 DEFENDANT'S MOTION FOR SUMMARY
39 JUDGMENT
40 (No. 2:20-cv-01733-JLR) – 1

41 Perkins Coie LLP
42 1201 Third Avenue, Suite 4900
43 Seattle, Washington 98101-3099
44 Phone: 206.359.8000
45 Fax: 206.359.9000

1 3. DaVita does not activate the Disaster Relief Policy (i.e., declare an emergency time
2 frame and identify affected facilities or business offices) for every declared emergency or natural
3 disaster. For example, the Policy was not activated for wildfires in California or for other public
4 health emergencies like when President Trump declared the opioid crisis a public health
5 emergency in October 2017 or when Governor Inslee declared a state of emergency on January
6 25, 2019 in connection with a measles outbreak. DaVita has only declared an emergency time
7 frame when a declared emergency or natural disaster prevented teammates from performing their
8 regular duties. And even then, not all facilities are subject to an emergency time frame or even the
9 same emergency time frame—DaVita only designates facilities where operations are disrupted,
10 and some facilities are able to return to normal operations sooner than others. Teammates who
11 reported to designated facilities and worked their scheduled hours during an emergency time frame
12 were paid premium pay.

13 4. Throughout the pandemic, DaVita's dialysis clinics, labs, and business offices have
14 stayed open, and teammates remained able to perform their regular job duties. I am not aware of
15 any major disruptions at our facilities caused by the pandemic. I am unaware of anyone in local
16 leadership at any facility nationwide requesting that DaVita activate the Policy for their region,
17 facility, or office.

18 5. DaVita provided managers with a document that included responses to frequently
19 asked questions about the pandemic. Attached to this declaration as Exhibit A is a true and correct
20 copy of an unredacted portion of the COVID-19 managers' guide.¹

21 6. When determining whether the Policy applied to the pandemic, I reviewed the
22 language of the Policy and confirmed it did not apply to the current situation. Other members of
23 the People Services Team came to the same conclusion. This decision was consistent with the
24 ways in which we have and have not applied the Policy in the past.

25
26

¹ Non-responsive portions unrelated to the Disaster Relief Policy have been redacted for confidentiality.

1 7. For example, DaVita enacted the Policy during natural disasters like Hurricane
2 Michael in 2018 and Winter Storm Uri in February 2021, both of which disrupted operations and
3 teammates' abilities to do their jobs. During my time as GVP, multiple hurricanes hit the
4 Southeast, including Hurricane Michael in 2018. In the immediate aftermath of Hurricane
5 Michael, Team Endeavor's Division Vice Presidents ("DVPs") reported to me the destruction
6 caused by the hurricane was making it difficult for teammates to get to our clinics for their shifts,
7 and making it difficult to do their jobs if they did come in. There were clinics where the roof had
8 blown off in the storm or caved in; many clinics lost power, water, or had leaks or physical damage.
9 Flooding blocked some roads. In one case, a fallen tree blocked the road leading to a clinic and I
10 observed teammates using chainsaws to clear a path for patients and other staff. I worked closely
11 with my team to identify which facilities were affected in these ways by the hurricane and how
12 long the disruption would last. We designated affected facilities and established an emergency
13 time frame for each. That information was communicated to payroll, who ensured teammates who
14 reported to those facilities and worked their scheduled hours during that time were paid premium
15 pay.

16 8. In February 2021, when Winter Storm Uri threatened facilities across Texas and
17 Louisiana, Group Vice President Chakilla Robinson requested DaVita leadership activate the
18 Disaster Relief Policy. Teammates who reported to a designated facility and worked their
19 scheduled hours during the approved emergency time frame were paid premium pay.

20 I declare under penalty of perjury under the laws of the United States that the foregoing is
21 true and correct.

22
23 Signed at Denver, CO
24 , this 30th day of September, 2021.

25 DocuSigned by:
26 
Kenny Gardner
688883A5B6574C5...
Kenny Gardner

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 30, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Christina L Henry, WSBA 31273
Email: chenry@hdm-legal.com
HENRY & DEGRAAFF, PS
787 Maynard Ave S
Seattle, WA 98104
Telephone: 206-330-0595
Facsimile: 206-400-7609
Attorney for Plaintiffs

- Via Hand Delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Courier
- Via Facsimile
- Via E-Filing

J. Craig Jones
Pro Hac Vice Forthcoming
Email: craig@joneshilllaw.com
JONES & HILL, LLC
131 Highway 165 South
Oakdale, LA 71463
Telephone: 318-335-1333
Facsimile: 318-335-1934
Attorney for Plaintiffs

- Via Hand Delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Courier
- Via Facsimile
- Via E-Filing

Scott C. Borison
Pro Hac Vice Forthcoming
Email: scott@borisonfirm.com
BORISON FIRM, LLC
1900 S. Norfolk Rd. Suite 350
San Mateo CA 94403
Telephone: 301-620-1016
Facsimile: 301-620-1018
Attorney for Plaintiffs

- Via Hand Delivery
- Via U.S. Mail, 1st Class, Postage Prepaid
- Via Overnight Courier
- Via Facsimile
- Via E-Filing

DATED this 30th day of September 2021 in Seattle, Washington.

s/ Janet Davenport
Janet Davenport, Legal Practice Assistant

**CERTIFICATE OF SERVICE
(No. 2:20-cv-01733-JLR)**

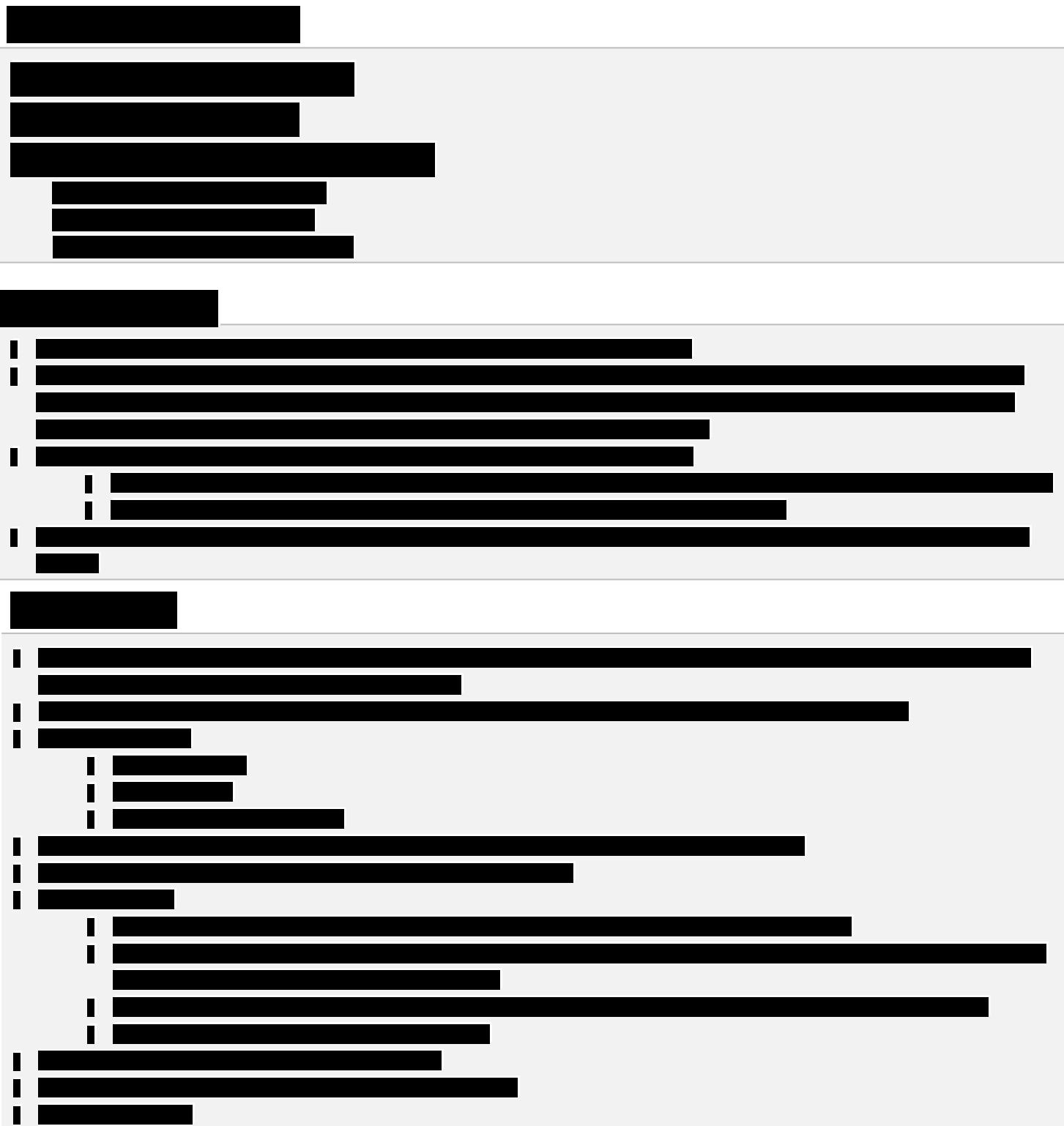
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

EXHIBIT A

COVID-19 RESPONSE

People Services Manager Guide

Updated May 12, 2020



Are we offering premium pay or additional pay under the Disaster Relief Policy?

- No. The Disaster Relief Policy does not apply to the COVID-19 crisis. The Disaster Relief Policy applies only when teammates are unable to perform their regular duties. The policy is effective upon a decision by local leadership and the Disaster Governance Council that a declared emergency or natural disaster prevents our facilities from operating or prevents our teammates from working. Under the COVID-19 crisis, our teammates are able to work and are essential in either in a supporting role for our health care workers or in actually providing healthcare services to patients. Click [here](#) for the full statement.
- As always, the Village remains highly committed to supporting our teammates in this new and unprecedented situation that we all find ourselves in. It is in this spirit that we announced the Village Lives Award and why we made the investment many years ago to offer back-up child care. We remain committed to providing support to teammates who are in need through the DaVita Village Network. We are all one Village working hard together, to provide great care to our patients.